

P-430/EM-95-258

P-430/EM-95-447

ORDER APPROVING RATES AND PASS THROUGH AND REQUIRING REFILED
TARIFF PAGES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of United Telephone's Petition
for the Introduction of Interim 500 Access
Service and its Classification as a Service
Subject to Emerging Competition

ISSUE DATE: November 2, 1995

DOCKET NO. P-430/EM-95-258

In the Matter of United Telephone's Proposed
Pass Through of Carrier
Identification Charge Associated with Interim
500 Access Service

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PROCEDURAL HISTORY

On March 27, 1995 United Telephone Company of Minnesota (United or the Company) filed revisions to its Intrastate Access Service Tariff and Price List to introduce Interim 500 Access Service as a new service. United also petitioned for the classification of Interim 500 Access Service as subject to emerging competition pursuant to Minn. Stat. § 237.59, subd. 2 (b) and (c), and Part 7829.2300 of the Commission's Rules. These matters were assigned to Docket No. P-430/EM-95-258.

On April 7, 1995, the Minnesota Department of Public Service (the Department) filed a letter supporting United's proposed rates and service.

On April 17, 1995, both AT&T and MCI filed objections to United's Classification Petition and United responded to those objections in Response Comments filed April 27, 1995.

On May 5, 1995, United filed a proposal to pass through U S west Communications, Inc.'s (USWC's) carrier identification charge (CIC). This proposal was assigned to Docket No. P-430/EM-95-447.

On May 10, 1995, the Department filed comments recommending that the Commission approve United's pass through proposal.

On October 17, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. United's Proposals

1. Revisions to the Intrastate Access Service Tariff and Price List

United's proposed revisions to its Intrastate Access Service Tariff and Price List to introduce Interim 500 Access Service as a new service. Interim 500 Access Service is a switched access service to interexchange carriers offering 500 service¹ to end-users. The present method of routing the call to the underlying carrier is interim in nature, because of the absence of 500 service data base and the consequent lack of 500 service portability. Interim 500 Access Service is composed of the typical switched access rate elements (local switching, transport, etc.), and the 500 routing and code activation elements.

2. Classification of 500 Access Service as Subject to Emerging Competition

United also petitioned for the classification of Interim 500 Access Service as subject to emerging competition pursuant to Minn. Stat. § 237.59, subd. 2 (b) and (c), and Part 7829.2300 of the Commission's Rules. According to United, Interim 500 Access Service is a new service offered after August 1, 1994 and is not integrally related to the provision of adequate telephone service or access to the telephone network or to the privacy, health or safety of the Company's customers. United stated that there is no requirement that the service should meet the criteria of Minn. Stat. §237.59, subd 5.

3. Pass-Through of the Carrier Identification Charge

In a later filing assigned to Docket No. P-430/EM-95-447, United proposed to pass through the carrier identification charge (CIC) assessed to United by U S WEST Communications, Inc. United explained that USWC performs the routing function for Interim 500 calls from United exchanges that do not have the capability.

B. The Department's Comments

The Department recommended that the Commission approve the rates for Interim 500 Access Service and the Company's proposal to pass through USWC's rates for the identification of carriers providing 500 access. The Department did not address United's petition to classify the service as emergingly competitive.

C. AT&T and MCI's Objection

¹ 500 service is a person-specific service that allows the called persons to receive the calls regardless of where they are.

AT&T and MCI both objected to United's proposal to classify 500 Interim Access Service as an emergingly competitive service. Both parties disputed United's claims that the service is new or that it is not integrally related to the provision of adequate local service or access to the telephone network. They argued that the service is simply a form of access service which has traditionally been considered by the Commission as noncompetitive. According to these companies, therefore, United did not demonstrate that Interim 500 Access Service meets the definition for emerging competition in Minn. Stat. § 237.57, subd. 4 (1994) or the criteria for emerging competitive service in Minn. Stat. § 237.59, subd 5 (1994).

D. United's Response to AT&T and MCI's Objection

United agreed that the access component of a 500 call is already classified as noncompetitive. United clarified that its classification petition pertains only to the activation/deactivation of each 500 code, and the assembly of route pattern for 500 calls. United noted that these elements are clearly new service offerings after August 1, 1994, and are not the provisions of access to the network.

E. Commission Analysis and Action

The Commission has reviewed the Company's proposed rates for the Interim 500 Access Service, finds them reasonable, and will approve them. Likewise, the associated pass through of USWC's carrier identification charge is reasonable and will be approved.

Regarding the proposal to classify the service as emergingly competitive, however, the Commission finds that this proposal is unsupported in the record and will not adopt it, pursuant to Minn. Stat. §§ 237.57, subd. 4 and 237.59, subd. 5 (1994) and the following analysis.

United's proposed service is, at root, an access service. Its very name, Interim 500 *Access* Service, emphasizes the access nature of the service. Access service, of course, is classified as a non-competitive service. Access service has never been classified as an emerging competitive service.²

The Company apparently relied on other services that are offered as constituent elements of 500 Access Service to turn an otherwise non-competitive service (access) into an emerging competitive service. However, the definitions of 500 Access Service contained in the tariff and price list filings (pages 130, 134, 135, 152, 160, 227, 245.1, 250 of the tariff, and pages 1.1, 9, 10, 11, 12, 13 of Section 6 of the price list) indicate that the service is composed of access, routing, activation and related components strictly on a bundled basis.³ United's filing did not show that the components that it asserted were emergingly competitive (the activation/deactivation of 500 codes and the assembly of route patterns) are independent services for the purpose of classification under Minn. Stat. § 237.59, subd. 2 (1994).

² United did not dispute the noncompetitive service classification of access service, nor did it ask for its reclassification.

³ Although the Company's tariff and price list include the separate rates for each component part, the filing clearly treats the offering as a bundled offering. A customer cannot choose to receive the routing and activation components independently of access service.

In the past, the Commission has found that a bundled offering consisting of noncompetitive and competitive components should be treated as a noncompetitive service. The Commission stated:

When dealing with past filings involving both competitive and noncompetitive services or service elements, the Commission has found the most reasonable approach is to treat the entire filing as noncompetitive. (Citations omitted.) The Commission continues to consider this the best approach. If the competitive and noncompetitive aspects of a proposal are so inextricably linked that the company cannot separate them in preparing a filing, it makes little sense for the Commission to try to separate them in examining the filing. It is also sound regulatory policy to resolve any doubt about the classification of a service or service element in favor of noncompetitive treatment and full regulatory protections. Finally, treating mixed classification filings as noncompetitive removes the risk of companies attempting creative "bundling" of competitive and noncompetitive services and service elements to evade proper classification and review.⁴

Accordingly, the Commission will deny United's request to classify this bundled service (500 Access Service) as emerging competitive and direct the Company to file tariff pages that reflect the noncompetitive status of the service.

ORDER

1. United's proposed rates for Interim 500 Access Service and the pass through of USWC's rates for the Carrier Identification Charge (CIC) associated with that service are approved.

⁴ In the Matter of the Request of U S WEST Communications, Inc. to Restructure and Reprice Centron and to Reprice and Restructure PBX Trunk and Private Line Rates, Docket No. P-421/EM-91-1002, and In the Matter of U S WEST Communications, Inc.'s Filing to Obsolete Centrex Rate Stability Plan, Docket No. P-421/EM-91-1000, ORDER FINDING FILING INADEQUATE AND REQUIRING SUPPLEMENTAL FILINGS (April 9, 1992) at page 5.

2. United's petition to classify its Interim 500 Access Service as an emerging competitive service is denied.
3. Within 10 days of this Order, United shall file tariff pages that reflect the noncompetitive status of its Interim 500 Access Service.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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